

:1:

**HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2357 OF 2005.

Mujtaba Hassan Taherabbassi,
Age: 37 years, Occu: Service,
r/at: 403 Erythra, Nyati Estate,
Mohammadwadi, Hadapsar,
Pune. ..Petitioner.

Versus.

1.The State of Maharashtra.

2. Police Inspector, Junnar
Police Station, Junnar. ..Respondents.

Shri. Amit Desai i/b Abhijeet Sarwate for the
petitioner.

Shri. D. S. Mhaispurkar A.P.P. for the State.

**CORAM: S.B.MHASE &
S.R.SATHE JJ**

DATE: NOVEMBER 21, 2006.

Oral Judgment (per S.B.Mhase, J.).

1. Rule returnable forthwith.

2. The petitioner has approached to this Court to issue appropriate writ or direction to quash and set aside the crime registered with Junnar Police station No. 6 of 2005 dated 15.4.2005 under section 273 of the Indian Penal Code and sections 2 & 16 of the Food Adulteration Act, 1954. Learned counsel for the petitioner raised two points, namely, consent under

section 20 of the Food Adulteration Act has not been obtained and the offence is non cognizable, and therefore unless the permission of the Magistrate is obtained under section 155(2) of the Code of Criminal Procedure, the police could not have investigated the offence. Therefore, he has submitted that the said crime may be quashed.

3. It appears that the crime was registered on the basis of the complaint of one Vilas Jadhav, P.S.I. and after investigation the charge sheet has been filed before the Judicial Magistrate, First Class's Court at Junnar being case RCC No. 57 of 2006. Learned counsel for the respondent submitted that though the investigation has been carried out without consent under section 20 or getting permission under section 155(2) of the Code, however at the time of the filing of the charge sheet an application was made to the Magistrate that the charge sheet may be accepted and that the permission to investigate under section 155(2) may be granted and thereafter the charge sheet may be accepted. The said letter is dated September 6, 2005 and on the said letter the Magistrate has passed order "Allowed to lay chargesheet." Therefore, learned A.P.P. submitted that the defect is cured and prayed for rejection of the petition. The point is no more res-integra. In the

matter of State of Harayana v/s. Ch. Bhajan Lal & others reported in AIR-1992 SC 604, it is observed that where, the allegations in the First Information Report, if any, accompanying the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under section 155(2) of the Code.

. We also make a reference to 2000(5) Bom.C.R. 89 in the matter of State of Maharashtra v/s. Dharmendra Ambar Mohite, it is observed in paragraph 14 that in case of non-cognizable offence, the person aggrieved has to file complaint before the Court. Even if report is filed at the Police Station for non-cognizable offence, Police cannot proceed further with investigation of such non-cognizable offence. The Police Station Officer has to direct the aggrieved person to file a complaint in the Court. If at all the Police intend to investigate the offence which is non-cognizable, then Police have to seek permission from the Magistrate as per provisions of sub-section (2) of section 155 of Cr.P.C.. Then only Police can proceed with the investigation and then Police can file any proceeding in the Court regarding such non-cognizable offence. So, it automatically follows that a Police

Officer cannot file report under sub-section (2) of section 173 of Cr.P.C. with respect to non-cognizable offence where no prior sanction from the magistrate is taken for investigation as per provisions of sub-section (2) of section 155 of Cr.P.C. So, any proceedings which are commencing on the basis of Police report under section 178 of Cr.P.C. with respect to a non-cognizable offence, without there being sanction under section 155(2) of Cr.P.C. would be void and bad in law ab initio.

. We can also make a reference to (1996) 11 SCC 557 in the matter of Keshavlal Thakur v/s. State of Bihar wherein it is observed that "on the own showing of the police, the offence under section 31 of the Representation of the People Act, 1950 is non-cognizable and therefore the police could not have registered a case for such an offence under section 154 when there was no order of a competent Magistrate under section 155(2), Cr.P.C. Therefore, neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen."

4. Therefore, what we find that in the facts and circumstances it is admitted position that the crime was

investigated without obtaining permission from the Magistrate under section 155(2) of the Code. Only because at the time of filing of charge-sheet the application was made seeking permission to file charge-sheet by giving permission under section 155(2) the defect in the basic investigation cannot be cured. Even though the Magistrate has passed the order on the said application as "allowed to lay chargesheet". Looking to all this position of law, we find that the investigation of crime no. 6 of 2005 registered with Junnar police station referred to above is bad and illegal. Not only that it is void ab initio.

5. Apart from the defect of section 155(2) of the Code, there is one more defect which is admitted, namely, consent under section 20 of the Food Adulteration Act has not been obtained, so far as the State is concerned. Therefore, the said prosecution which is launched as above stated is also required to be quashed.

6. In the result, petition is allowed. We hereby quash the said first information report. As a consequence of this, the criminal case bearing No. RCC No. 57 of 2006 filed before the Judicial Magistrate, First Class, Junnar is hereby also quashed. Rule is

:6:

made absolute in the above terms.

(S.R.SATHE, J.)

(S.B.MHASE, J.)

:sac/2006/sathe/